

TODD, SPENCER & ATKINS

ATTORNEYS AT LAW
AN ASSOCIATION OF ATTORNEYS
404 EAST COLLEGE STREET
DICKSON, TN 37055

TELEPHONE: (615) 446-0511

FAX: (615) 441-3437

HENRY F. TODD, JR.
ROBERT E. SPENCER
KENNETH ATKINS

REC'D TN
REGULATORY AUTH.

'98 JAN 14 AM 3 53

OFFICE OF THE
EXECUTIVE SECRETARY

January 13, 1998

Mr. David Waddell
Executive Secretary
Tennessee Regulatory Authority
460 James Robertson Parkway
Nashville, TN 37201

98-00021

RE: American Association of Retired Persons Petition
for an Investigation and/or a Show Cause Order
of the Just and Reasonableness of the Rates of
BellSouth Telecommunications, Inc.

Dear Mr. Waddell:

I have enclosed the Original and 13 copies of the Petition of the American Association of Retired Persons for an Investigation and/or a Show Cause Order of the Just and Reasonableness of the Rates of BellSouth Telecommunications, Inc., along with the \$25 filing fee.

I respectfully request that this be placed on the Agenda for the next Commission Conference.

Sincerely,



J. Kenneth Atkins

BEFORE THE TENNESSEE REGULATORY AUTHORITY

AT NASHVILLE, TENNESSEE

REC'D TN
REGULATORY AUTH.

'98 JAN 14 AM 3 53

OFFICE OF THE
EXECUTIVE SECRETARY

98-00021

**Petition for an Investigation and/or Show Cause Order to
Determine Just and Reasonableness of Rates Charged by
BellSouth Telecommunications, Inc.**

I

The American Association of Retired Persons (AARP), an organization comprised of more than 550,000 members in Tennessee, through legal counsel, requests the Tennessee Regulatory Authority (TRA) to initiate a contested case to investigate the just and reasonableness of BellSouth's Tennessee intrastate rates pursuant to the powers granted to it by TCA 65-5-201. AARP requests that the TRA issue a show cause order under the powers provided in 65-5-109 and direct BellSouth to show cause why rates to residential consumers should not be reduced to eliminate excessive earnings. Most of our members are consumers of residential telephone service supplied by BellSouth.

II

The legislature created the Tennessee Regulatory Authority to protect consumers from being charged excessive and unreasonable telephone rates by privately owned utilities operating in Tennessee. When there is a prima facie showing that the rates are unjust and unreasonable, as AARP shows herein, the Authority must exercise its power to determine the just and reasonableness of such rates pursuant to TCA 65-5-201. If the Authority fails to expeditiously set just and reasonable rates it will unduly prejudice AARP's members and cause them to suffer irreparable harm.

III

BellSouth's own financial data demonstrate clearly and unmistakably that rates to our members have been and will continue to be excessive, unjust and unreasonable:

<u>Period</u>	<u>Actual Rate of Return¹</u>	<u>Fair Rate of Return²</u>	<u>Rates in Excess of Fair Rate of Return³</u>
1996	14.95%	10.35%	\$113,392,000
1997 (9 months Sept)	19.62%	10.35%	\$171,554,000

For 1996 Bell's rates generated a 14.95% return on rate base, almost 50% higher than the 10.35% found fair by the Commission in that same year. For the first nine months of 1997, the return on rate base jumped to 19.62%, almost twice the return found fair by the Commission. For this same period, Bell's shareholders realized a 28.8% return,⁴ more than double the 12.50% found fair by the commission in 1996. In fact, the return is twice the 14% figure⁵ Bell's own witness testified was fair to shareholders.

IV

Not only have our members paid excessive rates for the past two years, they are continuing to pay unjust rates today and are likely to continue to do so for the reasonably foreseeable future. The 18.97% return on rate base⁶ earned by Bell for the most recent twelve months provides a useful yardstick⁷ of the return that is likely to prevail in the immediate future. This return is double the 10.35% the commission found fair. The return to shareholders is 27.8%⁸, also double what the commission and Bell's own witness testified was fair in the 1996 proceeding.

¹BellSouth TPSC 3.01, December 31, 1996 and September 30, 1997, filed with Tennessee Regulatory Authority.

²PSC Price Regulation Order, Doc. 95-02614, 1996

³ $(14.95\% - 10.35\% \times \$1,586,261,000) \div .6435 = \$113,392,000$ $(19.62\% - 10.35\% \times \$1,587,839,000 \times 9/12) \div .6435 = \$171,554,000$

⁴TPSC 3.01, Sept, 1997: $19.62\% - 2.65\%$ divided by $.5894 = 28.8\%$

⁵Commission Docket 95-02614, Jan 23, 1996 Order

⁶TPSC 3.01, 12 months ended September 30, 1997

⁷This yardstick is likely to be pessimistic based on the upward trend experienced during the last two years.

⁸ $18.97\% - 2.66\%$ divided by $.5876 = 27.8\%$

V

For 1996 and the most recent nine months of 1997, the table above shows that our members and other Tennessee consumers have been overcharged \$284,946,000 during the last 21 months. That averages \$109 per access line. Many of our members are on fixed and limited incomes and can not afford to continue to pay these unjust and unfair rates.

VI

A useful guide of the return BellSouth will realize for a reasonable period in the future is the most recent 18.97 % return on rate base experienced for the 12 months ended September 30, 1997. If the Authority reduced that return to the 10.35% found fair by the commission in 1996, there would be an annual rate reduction of \$212,379,000⁹. The average phone bill would be cut by \$81 annually or 17%.¹⁰ AARP believes that residential phone rates should be reduced to a level that produces a fair rate of return and that level is no more than the 10.35% found fair by the Commission in 1966.

VII

The last investigation of Bell's rates under TCA 65-5-201 was completed in August 1993. The Commission set rates using a one year test period for 1993 through 1995 and directed that any over or under earnings would be shared with customers in accordance with the provisions contained in rule 1220-4-2-.55. In March 1995, three months before the new law passed, the Commission initiated another investigation into Bell's earnings for the purpose of setting just and reasonable rates for 1996.¹¹ The Court of Appeals stayed the commission's investigation in October 1995 on the basis that the "The Commission has not explained how, or even if, the results of this rate investigation will have any effect on the rates BellSouth will be permitted to charge after 1995. The

⁹18.97% - 10.35% X \$1,585,458,000 divided by .6435 = \$212,379,000.

¹⁰TPSC 3.01: (\$212,379,000 excess annual revenue divided by 2,611,745 access lines = \$81) (Percentage rate excessive 17% = \$81 divided by \$474) (\$1,237,308,000 revenue divided by 2,611,745 access lines = \$474 annual revenue per access line)

¹¹Commission Conference, March 1995, Commission directed a new earnings investigation for 1996.

Commission's inability to articulate a reason or purpose for conducting these proceedings cast a shadow on their legitimacy." *Oct. 2, 1996 Court of Appeals Order 01-A-01-9509-BC-00400*, p. 2. As a result of that stay, neither the Commission nor the Authority has exercised their power under the former regulatory statutes for more than two years.

VIII

On November 19, 1997 the Court of Appeals clarified its intent¹² and held that the Authority could exercise its powers under the "former regulatory statutes":

As a result of our stay, BellSouth has continued to operate under the former regulatory statutes rather than the new statutes enacted in 1995. Court of Appeals Opinion on Petition for Rehearing, Page 4, November 19, 1997 Appeal No. 01A01-9602-BC-00066

In this decision the Court made it clear that consumers are entitled to protection under the "former regulatory statutes" until a valid price regulation order is issued under the new law. During the last two years, consumers have been denied any protection from excessive and unreasonable rates. The Authority's hands have been tied because it was faced with two separate stay orders issued by the Court. The Court had stayed the Commission's investigation of BellSouth's 1996 rates under the former laws¹³ and it had stayed the price regulation rates approved under the new law.¹⁴ As a result, it was unclear as to which statutory regime, the former or the new law, the Authority was operating under to establish reasonable rates for BellSouth. The Court has now cleared

¹²On October 1, 1997, the Court of Appeals vacated the Public Service Commission's Price regulation Order issued on January 23, 1996, and remanded the case to its successor, the TRA, for further proceedings consistent with the requirements of TCA 65-5-209. In response to a Petition by BellSouth, the Court followed up with an Opinion on November 19 and clarified its intent with respect to the question of whether or not BellSouth Telecommunications was subject to the former regulatory statutes or the price regulation laws (enacted into law on June 6, 1995) for the intervening periods from 1996, 1997 and for subsequent periods until the TRA issues a valid order for a price regulation plan.

¹³The Court of Appeals stayed and later reversed an investigation initiated by the Public Service Commission in a commission conference in March 1995 to set just and reasonable rates pursuant to the "former regulatory statutes." The Court's basis for reversing the Commission was that it could not give a reason for conducting such an investigation. Court of Appeals 01-A-01-9509-BC-00400, October 2, 1996.

¹⁴A new telecommunications law passed in June 1995. Shortly after passage, Bell filed an application for a price regulation plan. The commission issued an order in January 1996 approving a price regulation plan after ordering a \$56 million rate reduction. At Bell's request, the Court of Appeals stayed the commission's price regulation order which was to become effective March 1, 1996. That stay is still in effect and may continue for many more months or even years if an appeal is filed with the Supreme Court.

up this uncertainty and held that the Authority is free to exercise its power under the "former regulatory statutes."

IX

The Authority must now decide the appropriate action it must take to fulfill its obligation under the "former regulatory statutes." The key statute provides:

The Tennessee regulatory authority has the power after hearing upon notice, by order in writing, to fix just and reasonable individual rates,whenever the authority shall determine any existing individual rateto be unjust, unreasonable, excessive...TCA 65-5-201

This language describes the "just and reasonable" standard by which the Authority has been guided for establishing telephone rates under traditional regulation. AARP recognizes, however, that additional legal and factual issues not addressed by the Court will be raised by interested parties regarding the appropriate action for the Authority to take in determining just and reasonable rates for 1996 and 1997. For example, some of the questions likely to be presented are:

Since the Court's stay prevented the Authority from exercising its power during the last two years to set just and reasonable rates, is it now permissible for the Authority to determine if rates were just and reasonable for 1996 and 1997?

If it is appropriate to adjust rates for 1996 and 1997 to a just and reasonable level, are the above calculations of excessive revenues in 1996 and 1997 correct or should some other figures be used?

In light of the Courts stay that prevented the Authority from continuing its investigation to set just and reasonable rates for 1996, does the Authority now have the power to direct BellSouth to use the same revenue sharing process for 1996-97 that was in effect for 1993-95 under rule 1220-4-2-.55?

X

Based on the Courts ruling it is now appropriate to establish rates for the future under the former regulatory statutes. But this raises questions such as:

What steps should the Authority take to achieve a fair and orderly transition to a set of price regulation rates under the new law? What remedies are available to protect customers under the former regulatory statutes until rates under the new law become effective?

Are BellSouth's existing rates just and reasonable for the reasonably foreseeable future? If not, is AARP's \$212,379,000 excessive rate calculation presented above a reasonable approximation of BellSouth's excessive revenue or should some other figure be used?

A hearing on questions such as these will provide interested parties a forum to present facts and arguments on all relevant issues. This is the most effective manner for the Authority to develop a full and comprehensive record. Only then will the Authority be in the best position to reach an informed decision that is well reasoned and fair.

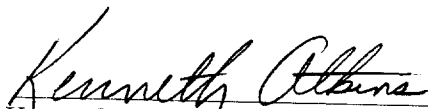
XI

This earnings information presented herein makes a compelling prima facie case that BellSouth's rates have been and will continue to be excessive, unjust, unreasonable and contrary to 65-5-201. If a utility's rates produce a return which exceed a fair rate of return, both Federal and Tennessee courts have held that such rates are unjust and unreasonable and violate the statutory standard of "just and reasonable." The Tennessee Supreme Court citing federal court cases stated:

It has long been established that when a commission or a legislative branch of the government fixes rates that a utility may charge that it must fix fair rate return to both utility and to the consumer of the product furnished by the utility. So, Bell T & T. Co. v. Pub. Serv. Com. 1957, 202 Tennessee Reports p. 471

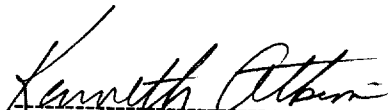
XII

As a result of Bell charging rates in excess of what is "just and reasonable" our members are suffering irreparable harm and request the Authority to convene a contested case to establish just and reasonable rates pursuant to TCA 65-5-201. Furthermore, the Authority should set an expedited hearing date, establish a schedule for filing briefs, testimony, and exhibits, and allow all interested parties an opportunity to participate.


Kenneth Atkins
Attorney At Law
404 East College St.
Dickson, TN 37055

Certificate of Service

I, Kenneth Atkins, hereby certify that I have served a copy of the foregoing on Guy Hicks, Esq., Attorney for BellSouth Telecommunications, Inc., 333 Commerce Street, Suite 2101, Nashville, Tennessee 37201 and L. Vincent Williams, Consumer Advocate Division, 425 Fifth Avenue North, Nashville Tennessee 37243-0500 this 13th day of January, 1998.


Kenneth Atkins